

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2023] NZEnvC 167

IN THE MATTER OF

an application for enforcement orders
under sections 315 & 316 of Resource
Management Act 1991 (regarding the
storage, repair and sale of whiteware and
appliances and the repair of vehicles at
23a Moody Avenue, Whangārei)

BETWEEN

WHANGĀREI DISTRICT COUNCIL
(ENV-2023-AKL-000111)

Applicant

AND

VLADISLAV GORBATCHEV
Respondent

Court: Judge J A Smith
Commissioner S K Prime

Hearing: 8 August 2023 at Whangārei Māori Land Court
Last case event: 8 August 2023

Appearances: J Dawson for Whangārei District Council
V Gorbachev for himself

Date of Decision: 10 August 2023

Date of Issue: 10 August 2023

RECORD OF ORAL DECISION OF THE ENVIRONMENT COURT

**A: The Court makes the following orders under ss 314(1)(a)(i), 314(1)(b)(i)
and (ii) of the Resource Management Act 1991 (the Act)**

(a) the Respondent must immediately cease, and not recommence, use



Whangārei District Council v Gorbachev

of the property at 23a Moody Avenue, Whangārei, legally described as Lot 1 DP 59523 and contained in Record of Title NA14D/343 (“the Property”) for an Industrial Activity involving the storage, repairs and sale of whiteware and appliances;

- (b) the Respondent must immediately cease, and not recommence, bringing any whiteware or appliances into the Property;
- (c) the Respondent must remove all whiteware and appliances being stored on the Property within 15 working days of this order and if the Industrial Activity is recommenced, within 15 working days of being given notice by the Council of the requirement to do so;
- (d) the Respondent must remove all materials, debris and waste resulting from complying with (a) and (c) within 15 working days of this order or if the Industrial Activity is recommenced, within 15 working days of being given notice by the Council of the requirement to do so;

B: This Court further orders, pursuant to s 314(1)(d) and s 315(2) of the Act:

- (a) if the Respondent fails to comply with this order, then the Whangārei District Council has the consent of the Environment Court to comply with the orders on the Respondent’s behalf; and
- (b) for this purpose, the Council may enter upon the Property and to sell or otherwise dispose of any materials removed in complying with these orders and after allowing for any monies received, if any, to recover the costs and expenses of doing so as a debt due from the Respondent;

C: For the purposes of these orders all materials, debris and waste means all materials not normally on a residential property that are being stored and unused, including:

- (a) Plastic;
- (b) Metal;

- (c) Timber;
- (d) Concrete;
- (e) Tyres;
- (f) Cars and car parts;
- (g) Tiles;
- (h) Containers;
- (i) Cardboard;
- (j) Paint; and
- (k) Packaging materials.

D: These orders shall remain in effect for three (3) years.

E: Any application for costs should be filed within 20 working days. A reply, if any, is to be filed within 10 working days thereafter.

REASONS

[1] This is a written record of an oral decision delivered on 8 August 2023. The Court has made changes to improve grammar and expression but not to matters of substance.

Introduction

[2] On 29 September 2022, the Court issued a consent determination¹ on an application for an enforcement order against Mr Gorbachev that required him to:

- (a) cease the use of the property for industrial activity including storage, repairs and sales of whiteware, appliances and vehicle repairs;

¹ *Whangārei District Council v Gorbachev* [2022] NZEnvC 181.

- (b) further remove all whiteware, appliances and vehicles for repair that were stored on the property within 30 working days;
- (c) remove the lean-to structure located on the north-eastern boundary of the property within the 30 working days; and
- (d) remove all materials, debris and waste resulting from complying with those orders within 30 working days.

[3] The order gave the Council consent to enter the property to sell or otherwise dispose of those materials and recover those costs and recover the costs and expenses of doing so as a debt due from the Respondent if the order was not complied with by the Respondent. It also listed the items meant by materials, debris and waste. A copy of that order is annexed hereto and marked “A”.

[4] Within three months or so, Mr Gorbachev appears to have complied with that order. That is confirmed in the affidavit of Ms Biddlecombe who filed an affidavit and gave evidence for the Council. There were still several elements of non-compliance, and the lean-to may have remained along with some other debris. The Council overall concluded that the Respondent had complied with the orders.

Council inspections 2023

[5] By May 2023 the Council was getting complaints as to the property and conducted an inspection on 7 June 2023.

[6] Mr Gorbachev does not recall the inspection, nor does he accept that he was shown the Officer’s warrant. Nevertheless, the Officer, Ms Biddlecombe, gives evidence that she was accompanied by another Council Officer, Lee Mitchell, and two Police Officers. Ms Biddlecombe’s evidence is that she showed the warrant to the Respondent and Mr Gorbachev then tried to close the door. They managed to enter the premises and undertake an inspection.

[7] Photographs were produced showing appliances stored in the south-eastern

corner of the property. These were outside the house itself. There was also some whiteware hidden between structures on the property.

[8] Ms Biddlecombe had found these items advertised for sale on Facebook Marketplace and produced a number of photographs of those items.

[9] As far as I can tell there were such goods on the site. Clearly this Court prefers the evidence of Ms Biddlecombe and makes no comment in the context of this hearing about the veracity of Mr Gorbachev in the circumstances, that is a matter for another Court.

[10] Ms Biddlecombe goes on to describe a further inspection conducted on 20 June 2023, again with Ms Mitchell and two Police Officers in attendance. That found a similar position. Mr Gorbachev again was shown the warrant, he refused access by closing the front gate and left his property walking up Moody Avenue. Mr Gorbachev has no recollection of the event.

[11] We clearly prefer the evidence of Ms Biddlecombe on this issue also. At that time, there were 23 whiteware appliances on the site and photographs of those were produced. Several photographs show trailers that appear to be used for the transport of whiteware. Again, these were advertised on Facebook Marketplace.

[12] This Court is satisfied, notwithstanding Mr Gorbachev's assertions to the contrary, that these items were being sold from the property. It appears that they were being repaired and stored as well.

[13] The Council Officer, Ms Biddlecombe, said she undertook another on the morning of 8 August 2023. There had been an intermediate external visit, but Ms Biddlecombe was not involved in that. On the 8 August 2023 visit (the day of this hearing), Ms Biddlecombe, Council Officer Ms Mitchell and the Police attended the property, and Mr Gorbachev was not present. They left their card at the property and confirmed there were still items of whiteware stored on the property.

Mr Gorbachev's issues

[14] Mr Gorbachev's response to this Court, both at call-overs and during this hearing, was that no search warrant has been produced to him. The Court has made it clear that an RMA Officer has a standing warrant to undertake inspections of the external area of any property upon the production of the warrant. I am satisfied that on each occasion the Officer's Warrant was produced, and that a search warrant is not required separately.

[15] The other issue raised by Mr Gorbachev were that these people were strangers. I simply do not accept that. Mr Gorbachev well knows who the Council Officers are. He has seen them in Court, and he has had to deal with them now for a reasonably long length of time, over multiple inspections.

Evaluation

[16] The full planning circumstances are set out in the previous decision, annexed hereto as "A". I see little point in repeating the background as to the status of the activity given that previous decision and orders made.

[17] I find Mr Gorbachev's evidence unreliable and clearly prefer the evidence of Ms Biddlecombe on the matter. I did not consider it necessary for the Council to call other witnesses at this stage for the purpose of this hearing.

[18] Given the previous order was made by consent, the question is why a further order was required on this occasion. Essentially, the other order was complied with and although that included provisions that the Respondent must cease bringing any whiteware, appliances or vehicles for repair (which would still apply in my view) other orders would be required because once the compliance has been achieved, it is at least arguable that its future compliance was not required in terms of the order.

[19] Accordingly, the order sought by the Council now is almost identical but includes some additional provisions. The Council have sought orders requiring actions not be recommenced under A, subparagraphs (a) and (b). Under A,

subparagraphs (c) and (d), the orders refer to 15 working days rather than 30 working days. The power of the Council to enter under s 315 RMA is in similar terms.

[20] There is an addition that the order will remain in effect for three years. We agree this is entirely appropriate and would have considered there may be argument in this case for an unlimited period. However, we cannot grant an order wider than that sort.

[21] We make the orders in the clear contemplation that there are other actions that the Council can take including prosecution, but that is not the subject of the current application which is to seek compliance.

Enforcement orders

[22] The Court makes the following orders under ss 314(1)(a)(i), 314(1)(b)(i) and (ii) of the Resource Management Act 1991 (the Act):

- (a) the Respondent must immediately cease, and not recommence, use of the property at 23a Moody Avenue, Whangārei, legally described as Lot 1 DP 59523 and contained in Record of Title NA14D/343 (“**the Property**”) for an Industrial Activity involving the storage, repairs and sale of whiteware and appliances;
- (b) the Respondent must immediately cease, and not recommence, bringing any whiteware or appliances into the Property;
- (c) the Respondent must remove all whiteware and appliances being stored on the Property within 15 working days of this order and if the Industrial Activity is recommenced, within 15 working days of being given notice by the Council of the requirement to do so;
- (d) the Respondent must remove all materials, debris and waste resulting from complying with (a) and (c) within 15 working days of this order or if the Industrial Activity is recommenced, within 15 working days of being given notice by the Council of the requirement to do so;

[23] This Court further orders, pursuant to s 314(1)(d) and s 315(2) of the Act:

- (a) if the Respondent fails to comply with this order, then the Whangārei District Council has the consent of the Environment Court to comply with the orders on the Respondent's behalf; and
- (b) for this purpose, the Council may enter upon the Property and to sell or otherwise dispose of any materials removed in complying with these orders and after allowing for any monies received, if any, to recover the costs and expenses of doing so as a debt due from the Respondent;

[24] For the purposes of these orders all materials, debris and waste means all materials not normally on a residential property that are being stored and unused, including:

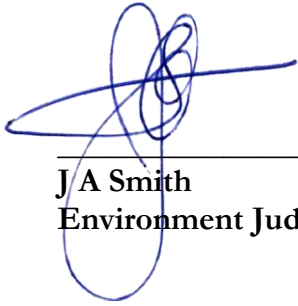
- (a) Plastic;
- (b) Metal;
- (c) Timber;
- (d) Concrete;
- (e) Tyres;
- (f) Cars and car parts;
- (g) Tiles;
- (h) Containers;
- (i) Cardboard;
- (j) Paint; and
- (k) Packaging materials.

[25] These orders shall remain in effect for three (3) years.

Costs

[26] The final issue is the order for costs. Any application for costs should be filed within 20 working days. A reply, if any, is to be filed within 10 working days thereafter.

For the Court:



J A Smith
Environment Judge



**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2022] NZEnvC 181

IN THE MATTER OF

an application under ss 315 and 316 of
the Resource Management Act 1991

BETWEEN

WHANGAREI DISTRICT COUNCIL

(ENV-2022-AKL-000176)

Applicant

AND

VLADISLAV GORBATCHEV

Respondent

Court: Environment Judge J A Smith, sitting alone pursuant to s 279 of
the Act

Hearing: On the papers
Last case event: 28 September 2022

Date of Decision: 29 September 2022

Date of Issue: 29 September 2022

**DETERMINATION OF THE ENVIRONMENT COURT ON
APPLICATION FOR ENFORCEMENT ORDERS**

ORDERS

**A: The Court makes the following orders, by consent, under s 314(1)(a)(i),
314(1)(b)(i) and (ii) of the Resource Management Act 1991 (the Act):**

- (a) the Respondent must immediately cease use of the property at
23a Moody Avenue, Whangarei, legally described as Lot 1 DP
59523 and contained in the Record of Title NA14D/343 (“the
Property”) for an Industrial Activity involving the storage, repairs
and sale of whiteware, appliances and vehicle repairs;**



- (b) the Respondent must immediately cease bringing any whiteware, appliances or vehicles for repair, into the Property;
- (c) the Respondent must remove all whiteware, appliances and vehicles for repair that are being stored on the Property within 30 working days of this order;
- (d) the Respondent must remove the lean-to structure located on the north-eastern boundary of the Property within 30 working days of this order; and
- (e) the Respondent must remove all materials, debris and waste resulting from complying with (c) and (d) within 30 working days of this order.

B: This Court further orders, by consent, pursuant to ss 314(1)(d) and 315(2) of the Act:

- (a) if the Respondent fails to comply with this order, then the Whangarei District Council has the consent of the Environment Court to comply with the orders on the Respondent's behalf; and
- (b) for this purpose, the Council may enter upon the Property and sell or otherwise dispose of any materials removed in complying with these orders and after allowing for any monies received, if any, recover the costs and expenses of doing so as a debt due from the Respondent.

C: For the purposes of these orders all materials, debris and waste means all materials not normally on a residential property that are being stored and unused, including:

- (a) Plastic;
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- (d) Concrete;
- (e) Tyres;
- (f) Cars and car parts;
- (g) Tiles;
- (h) Containers;
- (i) Cardboard;
- (j) Paint; and
- (k) Packaging materials.

D: By consent, the Respondent is to pay to the Council the sum of \$5,000 (plus GST) within 10 working days of the order being made. Such order may be enforced in the District Court at Whangarei if necessary.

REASONS

Introduction

[1] On 28 August 2022, Whangarei District Council applied for a number of orders against Mr Vladislav Gorbachev. In summary, the Council sought orders that Mr Gorbachev cease bringing whiteware or appliances to the property, that all existing stored whiteware and appliances and a lean-to structure be removed from the property, and debris and waste product be removed.

[2] The application for enforcement orders applied to the property located at 23A Moody Avenue, Whangarei which is legally described as Lot 1 DP 59523 and contained in the Record of Title NA14D/343 (**the Property**).

[3] By way of background the Council asserted:¹

¹ Memorandum of counsel for Whangarei District Council in respect of application for

The Property is located at the end of cul de sac in a quiet residential area of the district. It is zoned Medium Density Residential Zone under the now operative District Plan. The Property is some 1,052m² and on its eastern boundary is a childcare centre and there is another childcare centre nearby.

An electrical, whiteware and appliance repair business is being operated from the Property by Mr Gorbachev. During their latest inspection of 11 August 2022, Council Officers observed over 80 appliances on the Property which are being stored for sale and repair.

Under the Operative District Plan this business activity is an Industrial Activity, which is defined as:

“An activity that manufactures, fabricates, processes, packages, distributes, repairs, stores or disposes of material (including raw, processed or partly processed materials or goods). It includes any ancillary activity to the Industrial Activity”

Industrial Activities are Prohibited Activities in the Medium Density Residential Zone.

[4] The orders were sought on the following basis:²

As an Industrial Activity, the activity is a prohibited activity under the Operative District Plan and therefore cannot continue. It does not have existing use rights.

In addition, there is a wood lean-to structure 11.5m in length and 4.2m in depth and set on the boundary (i.e. 0m setback from the north-eastern boundary). Rule MRZ-R4 of the Operative District Plan states:

All non-habitable major structures and buildings, and non-habitable rooms of buildings, are set back at least:

- a. 1.5m from side and rear boundaries, allowing for a 0m setback for a maximum length of 7.5m on any single boundary and a maximum total length of 10.5m on all boundaries.*
- b. 2.5m from a habitable room on any other site.*

The lean-to exceeds the maximum permissible length of 7.5m and therefore requires a resource consent. However, no resource consent has been applied for, nor obtained for this structure.

[5] The application was supported by an affidavit of Debra Lee Martin, an Enforcement Officer, sworn 26 August 2022. The affidavit set out the history of non-compliance, monitoring and enforcement action taken by the Council in relation to the Property. Ms Martin advised that despite numerous attempts by Council, the

enforcement orders dated 26 August 2022 at [4] – [9].

² Ibid at [10] – [14].

activity continues. The impacts include infestation of rats and impacts on neighbours and surrounding residents who are experiencing disruption, traffic, noise and antisocial behaviour.

Agreement reached

[6] The parties attended Court-assisted mediation in Whangarei on 28 September 2022 facilitated by Environment Court Commissioner Ruth Bartlett. Marina Krukovich was appointed by the Court to interpret into the Russian language for Mr Gorbachev.

[7] As a result of discussion between them, the parties have now agreed that an enforcement order should be made, by consent.

Evaluation

[8] Under s 279(1)(b) of the Act, an Environment Judge sitting alone may make an order that is not opposed. In this circumstance, the enforcement order sought is not opposed by any party. The parties have agreed to the basis on which an enforcement order may be made.

[9] The proposed enforcement order reflects an agreement reached between parties. The agreement was reached in circumstances where discussions were assisted by an Environment Court Commissioner. I also note that Mr Gorbachev was assisted by an interpreter. While I am prepared to make the order as sought by consent, the order does not represent the outcome of an independently reasoned assessment by the Court.

[10] However, given the circumstances and background set out in the application and affidavit, I am satisfied the concerns have a proper basis and the outcomes agreed are a reasonable response.

[11] In particular, the making of an order under s 315 of the Act is appropriate given the previous compliance concerns and reinstatement of the activity.

[12] Quite simply the activity appears contrary to the plan and has environmental and health impacts as asserted in Ms Martin's affidavit. The further orders are justified if

these assertions are correct. Given the agreement I assume they are not in dispute.

Enforcement orders

[13] The Court makes the following orders, by consent, under ss 314(1)(a)(i) and 314(1)(b)(i) and (ii) of the Resource Management Act 1991 (**the Act**):

- (a) the Respondent must immediately cease use of the property at 23a Moody Avenue, Whangarei, legally described as Lot 1 DP 59523 and contained in the Record of Title NA14D/343 (**the Property**) for an Industrial Activity involving the storage, repairs and sale of whiteware, appliances and vehicle repairs;
- (b) the Respondent must immediately cease bringing any whiteware, appliances or vehicles for repair, into the Property;
- (c) the Respondent must remove all whiteware, appliances and vehicles for repair that are being stored on the Property within 30 working days of this order;
- (d) the Respondent must remove the lean-to structure located on the north-eastern boundary of the Property within 30 working days of this order; and
- (e) the Respondent must remove all materials, debris and waste resulting from complying with (c) and (d) within 30 working days of this order

[14] This Court further orders, by consent, pursuant to ss 314(1)(d) and 315(2) of the Act:

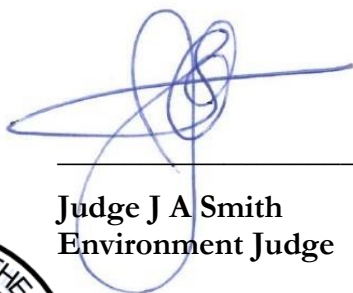
- (a) if the Respondent fails to comply with this order, then the Whangarei District Council has the consent of the Environment Court to comply with the orders on the Respondent's behalf; and
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costs and expenses of doing so as a debt due from the Respondent.

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- (k) Packaging materials.

[16] By consent the Respondent is to pay to the Council the sum of \$5,000 (plus GST) within 10 working days of the order being made. Such order may be enforced in the District Court at Whangarei if necessary.



Judge J A Smith
Environment Judge

